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OLL 85-0803  
8 March 1985

MEMORANDUM FOR: Director of Personnel  
Comptroller  
Chief, Administrative Law Division/OGC

FROM:

Deputy Chief, Legislation Division, OLL

STAT

SUBJECT: Federal Pay Equity Act of 1985 -  
Discriminatory wage setting practices between  
male dominated jobs and female dominated jobs

#### Introduction

1. Recently, Congresswoman Oakar, who chairs the Compensation Subcommittee of the House Civil Service Committee, introduced legislation nominally referred to as the Federal Pay Equity Act. ( H.R. 27 ) It is designed to eliminate any discriminatory wage setting practices between male dominated jobs and female dominated jobs. Similar legislation was introduced in the Senate with a firm commitment to hold hearings. ( S. 5 )

2. In the last Congress the House of Representatives voted in favor of identical legislation 413 to 6. However, the Senate did not act on its version of the bill. Nevertheless, the Senate Government Affairs Committee, having jurisdiction over federal wage setting practices has given top priority to this issue.

#### Background

3. Studies have found that certain female dominated occupations generally receive lower pay compared to male dominated occupations. Most notably the female dominated categories are nurses, teachers and clericals. Because women have been traditionally clustered in these fields there has

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been a tendency to pay them less. Supporters of the legislation maintain that the lesser wage is paid because these occupations are female dominated and not because these jobs have less intrinsic worth.

4. Experts in the field of occupational analysis have established objective criteria so that comparisons can be made between different occupations to determine pay field. Differentials in pay are based on such standards as skill levels, experience, education, responsibility, working environment and stress. For example, such analysis has been used to adjust unfair wage differentials between nurses, which is female dominated, and landscapers, a male dominated occupation. A federal court upheld the intrinsic worth analysis and found an unfair wage differential discriminating against nurses compared to landscapers. Accordingly, nurse's wages were upgraded.

5. The present controversy should be distinguished from a more blatant form of discrimination that existed in the past where men and women were paid different wages for the same type of work - female bus drivers and male bus drivers as a case in point. Any wage differential favoring men is discriminatory and illegal under the Equal Pay Act. The present bill attempts to make a finer distinction in wage setting practices between men and women in different occupations.

#### Legislative Analysis ( H.R. 27 )

6. The fundamental purpose of the "Federal Pay Equity Act" is to identify in federal government any discriminatory wage setting practices and discriminatory wage differentials ( Sec. 2 ). This objective will be accomplished by a comprehensive study by an outside consultant, contracted for by the Office of Personnel Management. The study and report shall include appropriate remedial recommendations ( Sec. 3 ). Elaborate procedures will be used to find and contract for such a consultant ( Sec. 4 ). During the study federal agencies are obliged to cooperate by supplying data, reports and other information the consultant may need for the study ( Sec. 5 ).

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### Conclusion

7. While the Administration is doubtful about the capability of making comparisons between different occupations, the Agency should, nevertheless, be prepared to answer views letters on the legislation. In this connection, it is important to note that section 5(c) of H.R. 27 has a protective provision which prohibits the disclosure of information which is otherwise prohibited from disclosure by law. Senate bill S. 5 has no corresponding provision.

8. A copy of the two bills and a Congressional Record statement is included herewith.

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Attachments:  
As stated



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